

IT 95-96
Tax Type: INCOME TAX
Issue: Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             )  
      v.                    )   Docket:  
                             )  
TAXPAYER,                  )  
                             )   Hollis D. Worm  
      Taxpayer(s)           )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

This matter is before this administrative tribunal as the result of a timely Protest by Taxpayer (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on February 27, 1995. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the tax years ending December 31, 1989 through December 31, 1991. The Notice proposed an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

In the taxpayer's Protest he stated that he was waiting for copies of his W-2s to determine the proper amount of state income tax due, at which time he will pay the proper amount of interest, penalties, and deficiencies. The taxpayer did not request an evidentiary hearing. Accordingly, this matter is being decided based upon the documents contained in the Department's file, including all documentation submitted by the taxpayers.

The issues to be resolved are:

(1). Whether the taxpayer failed to file an Illinois income tax return for the 1989 through 1991 tax years?

(2). Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005 and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be upheld in its entirety.

FINDINGS OF FACT:

1. For the subject taxable years, the taxpayer was an Illinois resident, earned income in the State of Illinois, and failed to file an Illinois income tax return. Dept. Ex. No. 1

2. The Department of Revenue issued a Notice of Deficiency for the subject taxable years. Dept. Ex. No. 1

3. The taxpayer filed a timely Protest. Dept. Ex. No. 2

4. The taxpayer did not file income tax returns with the State of Illinois for the 1989 through 1991 tax years.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer, as an Illinois resident who earned income in this state, was accordingly subject to Illinois income tax and was required to timely pay and file returns under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist. 1978). The taxpayer has

not met that burden in this case. He admits he owes Illinois income taxes for the subject taxable years, but contends the Department did not give him the proper credit for amounts withheld from his W-2s. However, the taxpayer did not supply the Department with a copies of his W-2s. Therefore, the proposed increase to his tax liability for 1989 through 1991 should be upheld.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 and 5/1005 for failure to file a tax return and for failure to pay the entire tax liability by the due date, respectively. Penalties imposed under the provisions of these statutory sections, however, shall not apply if failure to file or pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (*Rorabaugh v. United States*, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (*Dumont Ventilation Company v. Department of Revenue*, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayer presented no evidence to support a finding that his failure to file tax returns or to pay tax in a timely fashion was not due to negligence or that it was due to reasonable cause. He therefore failed to meet his burden of proof with respect to the aforementioned penalties.

35 ILCS 5/804 imposes a penalty for underpayment of estimated tax unless the taxpayer was not required to file an Illinois income tax return, or by reason of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience. 35

ILCS 5/804(e) and (f) The taxpayer was a resident of Illinois during the subject taxable years and therefore was required to file Illinois income tax returns. Furthermore, the taxpayer presented no evidence to support a finding that his failure to file was due to casualty, disaster, or other unusual circumstances. Therefore this penalty should be assessed.

It is my recommendation that the Notice of Deficiency be upheld in its entirety.

Hollis D. Worm
Administrative Law Judge

October 20, 1995